HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Criminal Misc. Application No. 798 of 2001
(Old No. 3601 of 1999)

Udyag Shukla ... Applicant

Vs

Session Judge,
Nainital & 5 others ... Respondents

Approved for reporting.

~~Not approved for reporting.~~

Date of Decision 1st August, 2006

Initial of Judge

(B.C. Kandpal, J.)

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 798 of 2001
(Old No. 3601 of 1999)

Udyag Shukla
S/o Sri M.N. Shukla
R/o Shukla Niwas
Nainital, Police Station Mallital
Near Silver Turn Hotel
District Nainital ... Applicant

Vs

1. Session Judge, Nainital
2. State of Uttar Pradesh
3. Sri Rajnesh Dubey
   District Magistrate, Nainital
4. Smt. Vimla Gunjial
   Circle Officer City
   Nainital
5. S.H.O., P.S. Mallital
   District Nainital
6. Smt. Janki Surya
   Principal Maharishi Vidya Mandir
   Nainital ... Respondents

Sri Dinesh Divedi, learned senior advocate assisted by Sri Arvind Vasisth, learned counsel for the petitioner
Sri Lalit Verma, learned A.G.A. for the State
Smt. Pushpa Joshi, learned counsel for the respondent No. 6

Hon'ble B.C. Kandpal, J.

This petition under Section 482 Cr.P.C. has been filed by the petitioner – Udhyag Shukla for quashing the proceedings in Session Trial No. 37 of 1999 pending in the court of Sessions Judge, Nainital under Sections 384, 420 of I.P.C. and Section 9 of Corruption Act.

2. Brief facts of the case are that the petitioner has formed a society in order to save the pollution of the environment and the name of that society is "*Society For Nature, Environment and Humanity*" popularly known as "*SNH*".

3. According to the petition, number of people of Nainital informed the applicant/petitioner about the illegal felling of the trees in large scale and the petitioner on his own information confirmed that news and approached the local authorities for taking action against the responsible persons. The illegal felling of trees was being done in an area of about 14 acres of land at Sona Pani Estates situated at Satauni Village of District Nainital which was purchased by *Maharshi Vadic Construction and Maharshi Medical Corporation Pvt. Ltd.* As no action was taken by the local authorities, therefore, the petitioner decided to report the matter to State Government. Meanwhile, the then Chief Secretary visited Nainital and the petitioner with the delegation approached him with a complaint in writing. The Chief Secretary thereafter asked the District Magistrate to enquire into the matter. The Deputy Divisional Forest Officer was required to conduct the enquiry along with Tehsildar, Nainital. After the enquiry was conducted a report in this regard was submitted.

4. The record reveals that meanwhile a complaint was lodged against the petitioner by one Smt. Janki Surya on 29.4.1999 indicating therein that on 21.01.1999, the petitioner approached her alleging that he would settle the matter right and solve the problem with regard to the cutting of trees with the Administration, as the District Magistrate was his relative. As there was a continuous demand of money by the petitioner as a motive or reward for inducing, by exercising of personal influence, upon the District Magistrate for settling down the matter, therefore, the complainant had assured the petitioner that she has arranged for part payment. The complainant Smt. Janki Sruya, thereafter informed the District Magistrate for taking proper action in the matter.

5. The District Magistrate transmitted the matter to the S.S.P., Nainital for taking action in the matter who directed the C.O., Nainital for organizing a raid. Thereafter on 29.04.1999, the police organized a raid and caught the petitioner red-handed accepting a gratification of Rs. 1.00 lacs for exercising his personal influence upon the District Magistrate.

6. The police after completing the investigation in the matter submitted the chargesheet before the court under Sections 384, 420 I.P.C. and Section 9 of Prevention of Corruption Act. The petitioner thus approached the High Court of Allahabad by way of this petition under Section 482 Cr.P.C. which has been transferred to this Court after creation of new State.

7. Heard Sri Dinesh Diwedi, learned senior counsel assisted by Sri Arvind Vashisth, learned counsel for the petitioner, Sri Lalit Verma, learned A.G.A. for the State and Smt. Pushpa Joshi, learned counsel for the respondent No. 6 and perused the record.

8. Learned counsel for the petitioner has argued that the complaint is nothing but counterblast of the activities of the petitioner. He has submitted that as the District Magistrate felt humiliation as he was scolded by the then Chief Secretary, therefore, the District Magistrate in order to take revenge against the petitioner organized a raid, which is nothing but a concoction. Learned counsel for the petitioner has also submitted that the story of the trap is absolutely concocted.

9. The arguments advanced by the learned counsel for the petitioner is based on disputed question of facts. While exercising the jurisdiction under Section 482 Cr.P.C., this Court is not supposed to embark upon an enquiry as to whether the evidence in question is reliable or not or whether on a reasonable appreciation of the same would not sustain the accusation. I am also not to function as a court of appeal of revision. The complaint in this case as well as the manner in which the petitioner has been caught red-handed makes out a prima facie case at this stage and I am not to act as a trial judge in exercising discretion and taking all relevant facts and circumstances into consideration.

10. Learned counsel for the petitioner has placed before me following citations of Hon'ble Apex Court which are:-

1. *R.S. Nayak Vs A.R. Antuley reported in AIR 1986 Page 2045*
2. *Padmaswar Mahadav Vs Municipal Board & others reported in 1981 All. L.J. 960*
3. *State of Orrisa through Kumar Raghvendra Singh & others Vs Ganesh Chandra Jew reported in 2004 (4) J.T. page 52*
4. *Law Lexicon by Rama Nath Aiyyar (Official duty, official act) page 1667 & 3322*
5. *Madan Mohan Vs State of U.P. reported in AIR 1954 637*
6. *Dalpat Singh Vs State of Rajasthan reported in A.I.R. 1969 (SC) 17*
7. *R.S. Nayak Vs A.R. Antuley reported in AIR 1986 page 2045*

I have gone through the judgments cited by the learned counsel for the petitioner but I am not of the view that at this stage, these judgments are of no help to the petitioner, as I am not supposed to look into the evidence of the case with regard to the disputed question of facts while exercising the jurisdiction under Section 482 Cr.P.C.

11. Learned counsel for the petitioner has further argued that the allegation made by the prosecution that the petitioner would influence the District Magistrate for settling the matter appears to be baseless as offending act is not integrally connected in discharge with the official duties of the District Magistrate. Therefore, there was no question of inducement on the part of the petitioner in any manner. It has thus been submitted that under the aforesaid circumstance, the provision of Section 9 of the Prevention of Corruption Act is also not applicable to the facts and circumstances of this case.

12. Again I fail to appreciate the arguments advanced by the learned counsel for the petitioner. It is to be noted that the enquiry in the matter was directed by the District Magistrate and the enquiry with regard to the felling of the trees was being conducted by the Forest as well as the Revenue Department. The Revenue Department is certainly headed by the District Magistrate in a District. Moreover, in case, if any complaint is received by the District Magistrate with regard to some corrupt practice adopted by any individual, then the District Magistrate being head of the Administration in a District, has an onerous responsibility to take action in the matter.

13. In the instant case, the District Magistrate has asked the S.S.P. concerned to take appropriate action in the matter after receiving the complaint. At this stage, it is quite clear that the petitioner asked the complainant for a gratification in order to exercise his influence upon the District Magistrate and there was a transaction of Rs. 1.00 lac in the shape of gratification and the petitioner was caught red-handed accepting the gratification. Therefore, this disputed question of fact whether the matter was in the official duty of the District Magistrate or not is to be decided by the trial judge.

14. Learned counsel for the petitioner has further submitted that the provisions of Section 384 and 420 I.P.C. are also not attracted in this case.

15. I again do not find any force in this arguments. The Section 482 of the Code envisage three circumstances under which the inherent jurisdiction may be exercised, namely:-

(i) to give effect to an order under the Code
(ii) to prevent abuse of the process of court and
(iii) to otherwise secure the ends of justice.

16. On consideration of the allegations made in the complaint as well as the other material available on record before me, it appears that the ingredients of the offence are disclosed and there is no material to show that the complaint is frivolous or vexatious, therefore, I do not find any justification for quashing the proceedings of the case at this stage.

17. Learned counsel for the petitioner has further argued that the complaint is based on malafides, hence, the

proceedings against the petitioner are liable to be quashed. He has cited before me following judgments of the Hon'ble Apex Court:-

1) *State of Haryana Vs Bhajan Lal reporte din 1992 (Suppl. 1) SCC page 335*
2) *State of Orrisa through Kumar Raghvendra Singh and others Vs Ganesh Chandra Jew reported in 2004 (4) J.T. page 52*
3) *State of Bihar & another Vs Shri P.P. Sharma & another reported in 1991 (Vol.2) J.T. page 147*
4) *State of Punjab & another Vs Gurdial Singh & others 1980 (2) SCC page 471*

I again do not find any force in the arguments and the judgments cited before me, are also not extending any help to the petitioner in view of the decisions of the Hon'ble Apex Court in a case ***Zandu Pharmaceutical Works Ltd. Vs Mohd. Sharaful Haque*** *reported in* ***(2005) 1 Supreme Court Cases 122*** wherein it has been observed that:-

> *"When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings."*

18. The Hon'ble Apex Court in the aforesaid case **(Supra)** has also observed that:-

> *"It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be*

sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings."

19. For the reasons stated above, I do not find any merit in this petition and the same is liable to be dismissed.

20. Accordingly, the petition under Section 482 Cr.P.C. is dismissed.

(B.C. Kandpal, J.)

August 1, 2006
ASWAL